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Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Albania

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Working Group on Enforced or Involuntary Disappearances on its visit to Albania from 5 to 12 December 2016. The Working Group thanks the Government of Albania for the invitation and for the cooperation extended before and during the visit. Today, the Government of Albania faces the opportunity and the challenge of overcoming the painful legacy of the human rights violations, including enforced disappearances, committed under the communist dictatorship. The Working Group remains committed to supporting the Government of Albania in its efforts to secure victims the rights to truth, justice, reparation and memory and guarantees of non-repetition.

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Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Albania*

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* Circulated in the language of submission only.

I. Introduction

1. A delegation of the Working Group on Enforced or Involuntary Disappearances conducted an eight-day official visit to Albania from 5 to 12 December 2016. The delegation consisted of the current Chair of the Working Group, Houria Es-Slami, and a member of the Working Group, Henrikas Mickevičius. This is the first time that the Working Group has visited Albania.

2. On 2 December 2009, the Government of Albania extended a standing invitation to all the United Nations special procedures. The Working Group thanks the Government of Albania for extending an invitation to visit the country, and for the support received prior to and during the visit, particularly from the Ministry of Foreign Affairs.

3. The Working Group wishes to thank the Office of the Resident Coordinator and the United Nations country team in Albania for their valuable support. The Working Group also expresses its gratitude to the associations and relatives of disappeared persons who provided information and testimonies during the visit.

4. In Tirana, the Working Group met the parliamentary subcommittee on human rights, the President of the Supreme Court, the Minister of Social Welfare and Youth and the Deputy Minister of Justice, and representatives of the Ministry of Foreign Affairs, the State Intelligence Service, the General Prosecutor's Office and the Ministry of Internal Affairs.

5. The Working Group also met representatives of independent State institutions, including the authority for the opening of the Sigurimi files, the institute for integration of the former politically persecuted, the Institute for the Studies of Communist Crimes and Consequences, the Commissioner for Protection from Discrimination, the Office of the Information and Data Protection Commissioner, and the Ombudsperson.

6. The Working Group met a number of formerly persecuted persons, including relatives of persons who had disappeared under the dictatorship, and also held meetings with civil society organizations and with representatives of the international community.

II. General situation of enforced disappearance in Albania

7. It has been more than 25 years since the fall of the totalitarian regime in Albania, yet the wounds of that painful past remain vivid. Albania has yet to deal adequately with the gross human rights violations committed between 1944 and 1991, when tens of thousands of victims suffered imprisonment, torture, internal exile, execution and enforced disappearance.

8. The Working Group has transmitted one case of an alleged enforced disappearance to the Government of Albania, which currently remains outstanding. However, as is the case with other countries, the number of cases registered with the Working Group does not necessarily reflect the real extent of the problem.

9. For almost half a century, Albania lived isolated from the world under the dictatorship. Many Albanians, considered enemies of the communist regime, were subjected to various forms of repression and human rights violations. The Sigurimi, the powerful intelligence service equipped with the most sophisticated means at the time, monitored the population's slightest movements.

10. The official data on missing persons and on those who were judicially or extrajudicially imprisoned or executed under the dictatorship are reportedly incomplete, with different non-governmental organizations offering different figures. It is estimated however, that more than 6,000 persons went missing, yet with no specific information on how many of them were forcibly disappeared.[1] According to information provided by the

[1] This was the most conservative and widely circulated figure supplied to the Working Group, although some sources say the number could be significantly higher.

Institute for the Studies of Communist Crimes and Consequences, victims can be classified into the following categories: people who were executed by the regime, with or without a trial; people who were imprisoned; and people who were internally displaced to concentration or labour camps. It is estimated that approximately 650 women and 5,600 men were executed, 22,000 persons were imprisoned, and 40,000 persons were internally displaced to camps. However, as internal displacement affected entire families, the total number of victims rises to more than 100,000 persons.[2]

11. The remains of those who were executed by the regime were mostly buried in mass unmarked graves located near detention centres, prisons and concentration or labour camps throughout the country. The 13 former political detention centres that operated between 1944 and 1991 were Kukes, Peshkopi, Burrel, Tirana, Elbasan, Berat, Tepelene, Gjirokaster, Vlore, Kavaje, Durres, Shkoder and Korce.[3] In addition, it is estimated that the number of labour camps amounted to more than 20, with some research identifying up to 56 camps.[4] The number of burial sites also remains inaccurate and is estimated by some sources to be between 22 and 29, including mass graves.[5]

12. In addition to those who were killed, a number of detained victims lost their lives owing to exhaustion, malnutrition and disease. This includes children, some born in forced labour camps, who were never registered and could not survive in these places. Living conditions in prisons and in concentration and labour camps were reportedly inhumane, and detainees were often subjected to torture and other forms of cruel, inhuman or degrading treatment. It has been argued that these facilities not only served the purpose of providing free industrial labour for the regime, but also allowed for the "physical elimination" of its political opponents.[6] In the case of those who died from old age or other natural causes in concentration and labour camps, but had no relatives living with them in these locations, their remains were not always returned to their families, but buried secretly, and therefore they also disappeared.

13. Finally, the Working Group also heard stories of victims who perished while attempting to escape the regime by leaving the country, and who were executed at border crossings; prisoners who were executed while attempting to flee from places of detention; and individuals who disappeared during military service. While there are varying degrees of certainty as to the final fate of these victims, most are presumed dead.

14. Regardless of the circumstances of death, the remains of imprisoned victims were rarely returned to their families. It was reportedly also a matter of not dedicating graves to political opponents of the regime so as not to transform them into symbols of opposition.

15. The surviving victims of imprisonment, torture, forced labour and exile have been recognized and granted victim status by the State. However, victims of enforced disappearance have not. The operative term in Albanian legislation, used by the implementing institutions, is that of "formerly politically persecuted". This designation recognizes persons as victims and provides for the right to compensation for those who can provide evidence that they are survivors of political persecution by the authoritarian regime. If the persons themselves have died, certain members of their families are able to submit the application in order to receive compensation. This approach eliminates from the compensation scheme family members who cannot obtain evidence that their loved ones

[2] Figures supplied to the Working Group during its meeting with the Institute for the Studies of Communist Crimes and Consequences, and reiterated during meetings with other authorities.

[3] Figures supplied to the Working Group during its meeting with the Institute for the Studies of Communist Crimes and Consequences.

[4] See R. Gashi, "Types of prisons and labour camps and the position of convicted persons in Albania during the communist dictatorship", *Thesis*, vol. 1 (2012), p. 31. The author identifies (pp. 32-33) at least 56 forced labour camps, including camps for drainage of marshes (14), for agriculture and canalizing (6), construction and industrial construction camps (16), airport construction camps (2) and mining camps (9), as well as camps and prisons exclusively for female detainees (9).

[5] The current mapping by the institute for integration of the former politically persecuted identifies at least 29 suspected burial sites.

[6] R. Gashi, "Types of prisons and labour camps".

have disappeared at the hands of the repressive State and fallen victim to political persecution. In cases when relatives can prove political persecution, that is, they are able to recover a judgment sentencing the disappeared person to death for a "political" crime, or obtain a decision in civil court proceedings declaring the death of a person imprisoned for a "political" crime, compensation is paid to them, albeit not as victims of enforced disappearance, but rather as surviving family members of formerly politically persecuted persons. Therefore, they do not enjoy the rights guaranteed to victims of enforced disappearance under international law, such as the right to truth, justice, reparation, memory and guarantees of non-repetition.

16. Despite the painful past that has affected a large part of its population, estimated today at nearly 3 million inhabitants (18 per cent were born after the fall of the regime), Albania has not launched a clear process to face its past and heal its wounds. The Working Group believes that it is necessary for Albania to adopt a comprehensive approach in dealing with the serious human rights violations of the past and to engage in reconciliation at the national level. Handling cases of enforced disappearance should be at the centre of this approach.

17. In general, the Working Group noted a continuing reluctance on the part of Albania to address its past of serious human rights violations and the lack of a national debate around the period of the dictatorship. More than 25 years after the end of the dictatorship, Albania is trying, through multiple initiatives but without proven effectiveness and far from satisfying the victims, to rectify some of the past abuses, in the absence of an overall strategy of reconciliation that can help build a future that will meet the aspirations of its people.

18. Current positive initiatives aimed at ensuring good governance and strengthening institutions and the rule of law cannot and will not reach their full potential if they are constrained by the burden of the country's painful past.

III. Legislative and institutional framework

19. The Working Group commends the Albanian authorities on their efforts to set up a comprehensive legal framework for the protection and promotion of human rights. The Albanian Constitution provides for a broad catalogue of civil, political, economic, social and cultural rights and declares them indivisible, inalienable and inviolable. The Constitution provides, inter alia, that no one may be deprived of liberty except in cases provided by law and in accordance with legal procedures, and no one may be subjected to torture or other cruel, inhuman or degrading treatment or punishment.[7]

20. Albania has ratified all major international and regional human rights treaties and other relevant treaties, including the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the four Geneva Conventions of 1949 and their additional protocols, the Rome Statute of the International Criminal Court, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

21. In particular, the Working Group is pleased to note that Albania is party to the International Convention for the Protection of All Persons from Enforced Disappearance, and has recognized the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of individuals under its jurisdiction, claiming to be victims of a violation by Albania of provisions of this Convention. Likewise, Albania recognizes the competence of the Committee to receive and consider communications in which a State party claims that another State party is not fulfilling its obligations under the Convention.

[7] Article 25 of the Constitution.

22. In accordance with the Constitution, international human rights treaties, when ratified by the parliament, become part of the national law; they are, as a general rule, directly applicable, and take priority over national legislation in case of conflict.[8] It is therefore essential that judges, prosecutors and other relevant officials should be fully familiar with the International Convention for the Protection of All Persons from Enforced Disappearance and other human rights treaties to which Albania is party. Exchanges with legal professionals during the visit brought to light an inadequate knowledge of essential precepts of the Convention, related, inter alia, to the nature of State obligations, the continuous character of the crime of enforced disappearance, and the concept of a victim of enforced disappearance.

23. The Working Group welcomes the fact that Albania has codified enforced disappearance as a distinct criminal offence, consistent with the definition given in the Declaration on the Protection of All Persons from Enforced Disappearance, and punishable by appropriate penalties which take into account its extreme seriousness.[9] The Criminal Code covers the various modes of criminal liability, including liability in relation to any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance. It expressly provides for the application of command or superior individual criminal responsibility for such crime. Perpetrating enforced disappearance against children and women aggravates criminal responsibility.[10] The Criminal Code also provides for appropriate mitigating or aggravating circumstances. In 2013, the Code was amended to include enforced disappearance in the definition of crimes against humanity, to which no statute of limitations applies.[11]

24. The Working Group encourages Albania to adopt provisions stating expressly that enforced disappearance is a continuous crime to which amnesties and immunities cannot be applied, so that the criminal law framework for preventing, investigating and punishing enforced disappearance is complete. It is important that domestic legislation is interpreted and applied in accordance with international law. It is a matter for regret that the criminal law on the books has not been tested in practice. The Working Group regrets that, despite large estimated numbers of persons forcibly disappeared by the authoritarian regime before it came to an end at the beginning of the 1990s, no case of enforced disappearance has been tried in Albanian courts.

25. The Working Group endorses the legislative and regulatory efforts of Albania to prevent secret detentions in compliance with article 10 of the Declaration. Albania has adopted a detailed legal framework to this end, which includes the requirement that public prosecutors should immediately be notified of all arrests and detentions in police stations, the right of arrested or detained persons to communicate with defence counsel without delay upon their arrest or detention, the right to inform the family, the right to be brought before a judge promptly after arrest, the requirement to keep detailed registers of detainees and prisoners, and a provision that imprisonments can be carried out only in accordance with the court sentences in formally designated places.[12]

26. Despite noticeable progress in developing adequate criminal and penitentiary legislation, the overall legal framework for addressing enforced disappearances perpetrated by the authoritarian regime following the Second World War is not satisfactory. In particular, it is disappointing that, more than 25 years after the regime came to an end, Albania still does not have comprehensive legislation securing the rights of both society and the families of forcibly disappeared persons to know the truth about what happened; the right of families to have the remains of their loved ones found, identified and returned to them; their right to reparation, including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition; and the right to memory, as well as the right to access to justice.

[8] Article 122 of the Constitution.
[9] Article 109/c of the Criminal Code (supplemented by Law No. 144, dated 2 May 2013, art. 25).
[10] Article 109/c of the Criminal Code.
[11] Articles 67 and 74 of the Criminal Code.
[12] Criminal Procedure Code of the Republic of Albania, Law No. 7905 (1995).

27. The legislation, which is intended to address past gross violations of human rights, is fragmented and scattered,[13] and so is the corresponding institutional framework,[14] in which a growing number of small entities and units — institute, department, task force or authority — with similar and sometimes overlapping mandates find themselves in competition for resources and influence, and are lacking coordination and collaboration,[15] which results in omissions and neglect of important issues and dilution of awaited outcomes. Experience in dealing with past enforced disappearances in a number of transitional justice contexts has shown that the establishment of a broadly mandated, multidisciplinary, "one-stop shop" type of institution might be a better investment in securing the rights of victims and, more generally, achieving national reconciliation, than the multiplication of minor institutions and units.

28. The Working Group is particularly concerned about the approach taken, which does not take into account the specificities of the phenomenon of enforced disappearance, as the legislation adopted to compensate for the sufferings endured by Albanians under the authoritarian regime did not embrace the concept of enforced disappearance (see para. 16 above).

29. The Working Group wishes to recall that the concept of enforced disappearance entails, inter alia, deprivation of liberty, whether legal or illegal under the law in force, by State actors or by private individuals or organized groups acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the State, followed by a refusal to disclose the fate or whereabouts of the persons concerned, with any intention, be it silencing political dissent and spreading terror among the population, or countering terrorism, or fighting ordinary crime, or with no clear intention at all. In addition, the concept of a victim of enforced disappearance includes both the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.[16] Family members of forcibly disappeared persons are commonly those who are directly affected by this heinous crime and egregious violation of human rights.

30. Based on the foregoing, it is advisable for Albania to grant the status of victim of enforced disappearance to family members of persons who disappeared or whose remains vanished during repressions, whether it was a result of political persecution or not. Family members should not be forced to accept a declaration of death of a disappeared loved one in order to receive compensation before their fate or whereabouts are clarified. Instead, the introduction in national legislation of a certificate of absence due to enforced disappearance, as has been accepted in a number of States, should be considered as a solution to define the legal status of forcibly disappeared persons and to guarantee pertinent rights to their family members.

IV. Truth

31. The Working Group, in its general comment on the right to the truth in relation to enforced disappearances, states that the right to the truth means the right to know about the progress and results of an investigation, the fate or the whereabouts of the disappeared

[13] See, for example: Law No. 7514 on Innocence, Amnesty of Ex-Convicted and Politically Persecuted of 30 September 1991; on Genocide and Crimes against Humanity, Committed in Albania during the Communist Regime on Political, Religious or Ideological Grounds, Law No. 8001 of 22 September 1995; Law No. 7698 on the Restitution and Compensation of Former Owners of 15 April 1993; and Law No. 45/2015 on the Right of Information to the Documents of the Former Security Service of the Popular Socialistic Republic of Albania (2015).

[14] Institute for integration of the former politically persecuted; Institute for the Studies of Communist Crimes and Consequences; the interministerial task force to search, locate and identify remains of persons executed during the communist regime; the new authority for the opening of the Sigurimi files and the ministries of justice, finance and social welfare and youth, for issues related to compensation.

[15] During one of the meetings the idea was raised that there is a need for a body to coordinate the work of existing bodies.

[16] International Convention for the Protection of All Persons from Enforced Disappearance, art. 24.

persons, and the circumstances of the disappearances, and the identity of the perpetrator(s).[17] Furthermore, the Working Group highlights that when a disappeared person is found to be dead, his or her family has the right to have the remains of the loved one returned to them, and to dispose of those remains according to their own tradition, religion or culture.[18]

32. A number of ad hoc and fragmented efforts to search for those who disappeared under the dictatorship have been launched in Albania, yet none of them has formed part of a comprehensive, truth-seeking State policy. In 2010, the Council of Ministers established an interministerial task force to search for, locate and identify remains of persons executed during the rule of the regime.[19] The task force was led by the Ministry of the Interior, with the participation of the Ministry of Social Welfare and Youth and the Ministry of Justice. However, when enquiring about the scope and mandate of the task force, and of any results it might have delivered, the Working Group could not obtain any information from either State or non-State interlocutors.

33. From the outset, the task force is said to have lacked dedicated resources and a technical secretariat, and its members met only sporadically. It was reported to the Working Group by different interlocutors that the task force never requested an investigation or coordinated with the General Prosecutor's Office, which was the core authority in charge of the investigation and exhumation of any suspected burial sites. While officially never dismantled, the interministerial task force is no longer operational, and the tasks it was charged with will reportedly now come under the disappeared persons' section of the institute for integration of the former politically persecuted.

34. The institute for integration of the former politically persecuted has already been collecting information on persons who went missing during the dictatorship. However, it was charged with this task only in late 2014, and for a number of years there have been no mandated institutional efforts to identify the missing persons and their relatives, to search for suspected burial sites or to recover and match remains. The Institute has managed to compile approximate figures, establish some contact with relatives and set up a database. It has also mapped a number of suspected burial sites in cooperation with victims' associations and relatives. However, it has not been allocated any budget to conduct actual excavations. It is estimated that the budget required to thoroughly search for missing remains in the burial sites identified in Albania is between 15 and 20 million euros.[20]

35. The Working Group was also informed of some exhumations, which were conducted in 2002 and 2003 to recover the remains of 22 intellectuals who were falsely accused of bombing the Soviet embassy in 1951 and executed by the regime. Through forensic testing, the remains of 17 of the 22 victims were identified. Also, excavations were conducted by the authorities in 2010 near Mount Dajti, in Tirana, where 13 sets of remains were reportedly found near a former detention centre. These remains, however, have yet to be identified, as there is reportedly no adequate forensic expertise within the country to do so.

36. With a few exceptions, most of the searches and excavations have been undertaken by the families of the disappeared, using their own financial resources, and without any expert or forensic support from State institutions. The institute for integration of the former politically persecuted estimates that there are at least 300 cases in which the family members claim to have identified the remains of their loved ones. However, none of the remains recovered directly by the relatives of victims have undergone DNA testing, so there is no conclusive evidence showing to whom they belong.

[17] See A/HRC/16/48, para. 39.

[18] Ibid.

[19] Decision No. 133 of 24 February 2010 on the creation of a task force that will seek to find and identify the people executed by the communist regime.

[20] Estimate supplied to the Working Group by the Institute for the Studies of Communist Crimes and Consequences.

37. Families sometimes have to pay witnesses to help in identifying places of burial. They go from region to region trying to locate these places by themselves. They conduct their own investigations and research and sometimes their own informal exhumations. Many sites are now being degraded. Some remains in certain burial sites have allegedly been displaced more than three times. The testimonies received indicate that, except for the authorization of the prosecutorial authorities to carry out some of the excavations, there is a lack of involvement of the General Prosecutor's Office or the Institute for Forensic Medicine in these searches. Another source of concern is that a number of the suspected burial sites that have been identified and mapped, and that remain unexcavated, have not been preserved.

38. The Working Group is encouraged by an envisaged agreement on collaboration with the International Commission on Missing Persons, aimed at supporting the search for missing remains. The agreement would involve the presence of the Commission in Albania to provide technical expertise and capacity-building for data management systems, sample collections and DNA testing and matching.

39. Through financial support provided by the European Union, the sum of €500,000 has been allocated to a one-year pilot project, aimed at identifying remains in two burial sites: Mount Dajti and Balish. The objective is to carry out DNA-led identification of the remains that have already been excavated in Mount Dajti, and to excavate the site further in order to recover additional remains suspected to be there. In Balish, the aim is to begin the anthropological and archaeological excavation of the site. This pilot project is to be led by the relevant Albanian institutions, such as the Institute for Integration of the former politically persecuted and the Institute of Legal Medicine, under the guidance and mentoring of the International Commission on Missing Persons and in line with the its protocols and technical standards.

40. The Working Group was informed, however, that the launch of the pilot project remains stalled due to the pending accession of Albania to the Agreement on the Status and Functions of the International Commission on Missing Persons. The signing of the Agreement is a necessary precondition for formalizing the legal status of a Commission presence in Albania. Through its exchanges with the Institute for Integration of the former politically persecuted, the Ministry of Social Welfare and Youth and the Commission, it was made clear to the Working Group that all relevant institutions have undertaken the necessary preparatory work and will be ready to engage fully with these initiatives, as soon as the Agreement is signed and the Commission can begin operating in the country.

41. As stated in the Working Group's general comment on the right to the truth in relation to enforced disappearances, when a disappeared person is found to have died, the remains of the person should be clearly and indisputably identified, through DNA analysis or otherwise. The Working Group has stressed that the State, or any other authority, should not undertake the process of identification of the remains, and should not dispose of those remains, without the full participation of the family and without fully informing the general public of such measures. States ought to take the necessary steps to use forensic expertise and scientific methods of identification to the maximum of its available resources, including through international assistance and cooperation.[37]

42. Access to archives is another essential precondition for ensuring the rights of victims to truth as well as justice. Article 13 (2) of the Declaration on the Protection of All Persons from Enforced Disappearance states that the competent authority should have the necessary powers and resources, including powers to compel attendance of witnesses and production of relevant documents. The Working Group has stated that the authority should also have the power to have full access to the archives of the State, and that the archives of the said authority should be preserved and made fully accessible to the public.[38] The importance of rendering public and fully accessible all archives that may contain information on the fate

[37] See A/HRC/16/48, para. 39.

[38] Ibid.

and whereabouts of disappeared persons has been underlined by the Working Group in a number of country visit reports.[17]

43. In 2015, the Albanian parliament passed Law No. 45/2015 on the right of information to the documents of the former security service of the Popular Socialistic Republic of Albania, which allowed access to the classified files of the Sigurimi State police and established a five-person authority tasked with overseeing this process. The selection of the members was delayed for several months but, in November 2016, the members of the authority were finally appointed, comprising one representative from the community of former politically persecuted persons; one from human rights organizations; one government appointee and two parliamentary appointees; all are victims or relatives of victims of the regime.

44. The authority for the opening of the Sigurimi files is now in charge of collecting, storing, managing, and processing information contained in the documents of the former Sigurimi State police. The new authority is also mandated to liaise with investigative and prosecutorial authorities, and with the institutions tasked with studying the crimes committed under the communist regime, as well as to undertake outreach and awareness-raising activities among the general public.

45. Law No. 45/2015 explicitly establishes an obligation for public authorities to make available all related documents that they hold in their archives. This is of particular importance for families searching for information on the fate and whereabouts of their missing loved ones, as well as for the entities providing support to these victims. The Working Group was informed that classified information still remains under the custody of the State Intelligence Services, the Ministry of the Interior, and the National Archives, yet the Law does not provide for the new authority to declassify the information. Regrettably, until specific regulation is put in place to establish the process of declassification by the new authority, it will be left to the relevant ministries to make this information available.[18]

46. The efforts leading to the opening of the Sigurimi files have been met with mixed reactions by various stakeholders, as some fear that the information in the files might further antagonize Albanian society, instead of promoting reconciliation. Many fear that the opening of the files will be used for political purposes, particularly in the context of upcoming elections, and simply lead to smear campaigns between political opponents. Others argue that, owing to the oppressive nature of the past regime, persons may have provided information or in some way cooperated with the police under duress, and that the opening of the files will expose them. Finally, there is the fear that many of the files were already destroyed or tampered with in the early years following the fall of the dictatorship, since it has taken so long for their opening to be authorized.

47. For the relatives of those who disappeared during the regime, however, the opening of the files provides an additional avenue for finding information on the final fate and whereabouts of their loved ones, as well as creating the possibility of obtaining a formal acknowledgment of their suffering.

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[17] See, for example, A/HRC/33/51/Add.2, para. 44; A/HRC/33/51/Add.1, para. 26 and A/HRC/27/49/Add.1, para. 29.

[18] In June 2017, the Working Group received information from the Government indicating that Decision No. 98 had been approved by the Council of Ministers on 15 February 2017. The decision is "for the transfer procedure, under the administration of the authority, of archival materials of the former state security, located in the Ministry of Defence, the Ministry of Internal Affairs, the State Intelligence Service and other public authorities". Pursuant to this decision, the authority has signed cooperation agreements with the Ministry of Internal Affairs and with the General Directorate of Archives (No. 1542, dated 18 May 2017 and No. 2953, dated 5 May 2017). The Working Group was also informed that the State Intelligence Service has started the process of submitting documents. According to the decision of the Council of Ministers, the responsibility for providing information on the former State security documents has passed to the authority and facilities have been placed at its disposal for the transmission of all documents. Also, on the basis of Law No. 45/2015, the authority has implemented legislation for information classified as State secrets, thus solving the problem of declassification of information.

48. The Working Group acknowledges the constraints that the passage of time may pose in the identification of individual victims. As reflected in its general comment on the right to the truth in relation to enforced disappearances, there is no absolute obligation of result, but there is an absolute obligation to take all the necessary steps to find the person. If, in certain cases, clarification is difficult or impossible to obtain, the State still has an obligation to investigate until it can determine by presumption the fate or whereabouts of the person.[37]

V. Justice

49. The Working Group recalls that the Declaration requires States to guarantee to victims of enforced disappearance an effective remedy that includes a thorough and impartial investigation with a view to identifying those responsible for the enforced disappearance, bringing perpetrators to justice, and imposing on them appropriate penalties. The State's responsibility to investigate and try cases of enforced disappearance continues irrespective of changes of government. Bearing in mind that, during two decades of transition from dictatorship to democracy, no criminal cases of enforced disappearance were brought before the courts, the Working Group is bound to declare that Albania has not fulfilled this obligation and there is a problem of structural impunity in relation to enforced disappearances perpetrated during the dictatorship. The Working Group has repeatedly indicated that impunity for committed enforced disappearances may be a source of new violations in the future.

50. There is a complex combination of factors leading to this lack of judicial accountability for past enforced disappearances. Their analysis goes beyond the present report, however, the Working Group wishes to emphasize a noticeable lack of public discourse and little political consideration of enforced disappearances, as manifested by the exclusion of forcibly disappeared persons and their family members from the compensation scheme for past abuses. In this discouraging environment, investigative and prosecutorial authorities take little interest in the phenomenon of enforced disappearances and there is no sense of urgency; the authorities lack professional knowledge in this area and are, consequently, reluctant to initiate investigations.

51. The Working Group is not persuaded by the justifications offered during the visit for the lack of investigations into past enforced disappearances. In the course of the meetings, some views were expressed that perpetrators of serious crimes during the dictatorship could not be investigated and tried, as they had acted in accordance with the law then in force. To put this view in legal terms, this position appears to suggest that prosecution for acts that were not considered crimes when they were carried out would contradict the principle of non-retroactivity. The Working Group recalls, firstly, that the Declaration states that no circumstances whatsoever may be invoked to justify enforced disappearance. Secondly, enforced disappearance is a single consolidated act, not a combination of isolated, unconnected facts[38] and prototypical continuous crime.[39] This means, inter alia, that the crime extends for the whole period of time when it is not complete, that is until the fate or whereabouts of the disappeared person are clearly established, irrespective of whether that person is alive or dead. Consequently, cases of enforced disappearance can, and should, be investigated and tried if the commission of the act had begun before, and continues after, it was criminalized in national law, notwithstanding the principle of non-retroactivity.

52. Furthermore, in accordance with the Declaration, States are under an obligation to investigate alleged enforced disappearances ex officio.[40] Therefore, the justification given to the Working Group for the absence of investigations, i.e. that there have been no requests from concerned individuals for the launching of an investigation, runs counter to the State's international obligations and does not justify lack of action. Albanian investigative and

[37] See A/HRC/16/48, para. 39.
[38] See A/HRC/27/49/Add.1, para. 40.
[39] See A/HRC/16/48, para. 39.
[40] Declaration on the Protection of All Persons from Enforced Disappearance, art. 13 (1).

prosecutorial authorities are duty-bound to investigate and bring cases to courts on their own motion, and they should act with a sense of urgency because of the significant amount of time elapsed since the enforced disappearances occurred. Further delay will not absolve Albania from its obligation to secure the right to justice for victims, but will make investigations and trials increasingly difficult, as victims and witnesses age and pass away. Also, in the face of the passivity of State authorities, families carry out their own investigations, thereby tampering with the would-be evidence (see para. 37 above).

53. During its visit, the Working Group received information about discoveries of grave sites and exhumations, carried out by families of disappeared persons, which were not supported by scientific examination and identification of recovered remains. Yet some relatives believe they have excavated remains of their loved ones and have reburied them (see paras. 36 and 37 above). The Working Group heard repeatedly that materials from State archives have been obtained by families through informal contacts and bribes and never returned. In this context, the Working Group welcomes the recent adoption of long-awaited legislation which will allow orderly access to the Sigurimi files, as well as a negotiated agreement with the International Commission on Missing Persons to begin methodical exhumations from identified grave sites and scientific examination of the recovered remains. It is the hope of the Working Group that these developments will help to generate the necessary momentum for immediate and vigorous judicial investigations and prosecutions. The law enforcement authorities and courts should be provided with all the necessary means to this end, and victims of enforced disappearance should be encouraged to use legal avenues and assured that their right to access to justice is not theoretical and illusory, but practical and effective, through the provision of free legal aid.

54. It is of the utmost importance that Albanian law enforcement officials, judges and lawyers representing victims, who are not familiar with conducting and participating in investigations, prosecutions and trials of crimes of enforced disappearance, are properly trained in the applicable international standards and learn about the specificity of these crimes and about investigative and judicial practices. There are particular investigatory and judicial challenges, which may relate to issues such as the routinely systemic and latent character of enforced disappearance, the need for heightened sensitivity in dealing with victims, types of evidence and methods of its collection and evaluation in investigating and trying these crimes. Owing to the nature of the offence, cases of enforced disappearance are supported by circumstantial rather than direct evidence more frequently than other criminal cases, as direct evidence is either scarce or absent. Scientific evidence, as opposed to witness testimonies, is of special importance, in particular in cases involving mortal remains.

55. A high level of professionalism, including personal integrity, and improved capacity to investigate and try alleged cases of enforced disappearance are also important: during the visit, the Working Group received extensive and consistent information indicating that some family members of those who have disappeared have not lodged requests to open investigations because of their distrust of the legal system. In particular, the Albanian judiciary is widely perceived as inefficient, not independent and sometimes linked with the fallen dictatorship. In this context, the Working Group welcomes the constitutional changes introduced unanimously by the parliament in July 2016 that pave the way for reforms in the justice sector. Among measures aimed at the depoliticization and professionalization of the judiciary is the implementation of a vetting system, with a view to removing corrupted and politically compromised judges.

VI. Reparation and memory

A. Reparation

56. Article 19 of the Declaration imposes upon States the obligation to provide reparation to the victims and their relatives in cases of enforced disappearance, and to provide them with adequate compensation. Full reparation includes compensation, satisfaction, restitution, rehabilitation and guarantees of non-repetition.

57. The information received by the Working Group indicates that the current legislation neglects aspects of restitution and rehabilitation. Compensation is reportedly limited to persons in possession of documentation certifying their status or that of their close family members and relatives as having been politically persecuted by the dictatorship. This leaves numerous families of victims of enforced disappearance outside the boundaries of the compensation scheme.

58. Relatives of disappeared persons whose bodies have not yet been found or identified are excluded from the compensation process, since they are neither listed nor recognized as victims and therefore cannot undertake even the complex procedures established for surviving political prisoners or their families or those for the families of those who have been executed. Therefore, they cannot claim any compensation for the harm suffered, both materially and psychologically.

59. It should also be noted that, in order to file a claim for compensation, survivors of political persecution or their family members reportedly have to contact as many as five public institutions to collect documentation which is already in the possession of the State. This burdensome practice is disrespectful to those who have suffered under the dictatorship. It is also regrettable that the possibility of filing a claim for compensation was restricted by specific deadlines, which has allegedly led to the exclusion of persons who otherwise would have been entitled to compensation if they had made the claims within certain periods of time. For those who are entitled, the compensation is being provided through a staggered programme, although the victims have an immediate need for these resources.

60. The Working Group is of the view that the Government should review the current compensation scheme. The right to compensation should also be extended to victims of enforced disappearance and their families who are not in possession of documentation proving their status as politically persecuted. An amended compensation scheme should include, but not be limited to, people who disappeared without trial, such as people who disappeared illegally under the law then in force, or during the pretrial stages of a criminal process, or while attempting to cross the border.

61. The evidence gathered by the Working Group indicates a deep-seated sense of frustration and injustice among the families of disappeared persons because they are not considered victims of political repression during the dictatorship period, and are therefore denied the right to seek compensation. Relatives of the victims of enforced disappearance should be recognized as victims and given the opportunity to submit their claims for compensation. The absence of mortal remains, or the absence of the names of the victims on the registers or archives of the Sigurimi, should not be used as an excuse for not considering these persons as victims of repression during the dictatorship period.

62. The Working Group further recommends that the Government of Albania address the issue of reparations in a structured and comprehensive manner, streamlining and rationalizing the current piecemeal approach. It is the understanding of the Working Group that the compensation scheme has been created under the joint responsibility of the Ministry of Justice, the Ministry of Finance and the Ministry of Social Welfare and Youth. One way of increasing the efficiency of such a mechanism could include allocating these responsibilities to a single institution, or multidisciplinary "one-stop shop", which could also be involved in other aspects of all the rights of victims of enforced disappearance.

63. The Working Group gathered evidence that no psychological support has been provided for the families of victims of enforced disappearance, including those who were born in forced labour camps and survived, with or without their parents. Given the psychological impact of enforced disappearance on survivors and surviving family members of the disappeared, the Working Group considers it urgent to adopt a tailored psychological support plan to help to address the violence and mental and psychological harm suffered by these victims. The Working Group considers that concerted action involving the associations of victims and the establishment of support structures that guarantee confidentiality and take a gender approach are now both necessary and urgent. The situation of the victims and their families requires access to specific and tailored psychological and mental health services.

64. In addition, any process of searching for places of burial, exhumation, establishment of DNA databases and identification of remains must be accompanied by psychological care for the families and relatives of victims of enforced disappearance, which would allow them to face such challenges and finally be able to mourn their loved ones.

65. The Working Group recalls that, in cases of enforced disappearance throughout the world, women are generally the front-line victims and suffer the direct impact of the disappearance in economic, social and psychological terms. Indeed, any initiative that Albania adopts in future for truth, justice and reparation, including psychological support, should be based on a gender-sensitive approach that takes account of the suffering and the harm done to women, including socially, economically and psychologically.

B. Memory

66. The Working Group stresses the importance of establishing a strategy for memory that takes into account the importance of officially preserving former detention facilities and labour camps as memorial sites and creating memorials for the recognition and rehabilitation of victims. This strategy should also aim to create awareness among new generations and work towards reconciliation within Albanian society, taking into consideration its repressive past.

67. The Working Group has taken note of initiatives to publish biographical records of certain victims of repression, particularly women. The victims might also include former political prisoners, people sentenced to forced labour in labour camps or even novelists who have published narratives based on real facts of the dictatorship. The Working Group was also able to visit places of memory, such as Bunk'Art 1 and Bunk'Art 2, which show the various repressive methods and the modes of governance and operation of the systematic repression exercised by the dictatorship at the time.

68. The Working Group welcomes, in particular, the initiative of Bunk'Art 2, which underlines the importance of people remembering their past in order to build the future. The Working Group particularly welcomes the part that traces the memory of disappeared persons executed by the regime in labour camps or political prisons or persons who attempted to cross the border, whose remains were not found or identified. The museum also provides a census of political prisons, and lists some 6,000 missing people, some with indications of where they might have been buried. The Working Group notes that this is an important step towards collective and public recognition of the repression of the dictatorship and the victims of the past and encourages Albania to continue its efforts in this regard.

69. However, the Working Group was informed that the former places of detention and labour camps are neglected, that the places thought to contain the bodies of victims are not protected by the State, and that human remains have been displaced many times without regard to the victims or their family members. The Working Group also notes the absence of any concerted measures involving the victims of repression and the families of the disappeared relating to the concept of the preservation of memory or the creation of memorials dedicated to disappeared persons, whether at national level or in the places where the bodies of the victims of enforced disappearance are thought to be buried. Such measures would pay tribute to the victims and their families and publicly recognize the harm suffered by them; such initiatives are part of their rehabilitation and would serve as a place of memory for survivors in remembrance of their loved ones. These initiatives would also represent a recognition by the State and the community as a whole of its painful past, and form part of non-repetition measures.

70. The Working Group highlights the importance of protecting detention facilities and labour camps that operated during the dictatorship period, as well as places suspected of containing the remains of victims of enforced disappearance; engaging with victims and civil society associations in order to transform these sites into places of memory and reflection, and provide them with the necessary financial and human resources, within the framework of a strategy of memory developed in concert with the victims.

VII. Conclusions

71. Albania has still to come to terms with the gross and systemic violations of human rights committed by the dictatorship. More than 25 years after the collapse of the regime in 1991, the past remains omnipresent and the wounds remain deep, but go unnoticed. Albania is not yet able to face this painful past that has affected a large part of its population. However, it is still not too late for healing and reconciliation.

72. The continued reluctance to look into the past will hinder the capacity of Albania to move forward into the very promising future it is striving to build for itself. Current positive initiatives aimed at good governance, institution-building and the rule of law cannot and will not reach their full potential if restrained by the burden of the country's painful past. The State should encourage and facilitate a national public debate on the legacy of the repressive past and ways of collectively overcoming its painful consequences. Such a debate is especially important in a society lacking trust in State institutions and the fragmented State-sponsored initiatives set up to deal with the past.

73. It is most important that State authorities in consultation with relevant stakeholders should develop, propose and implement a comprehensive policy to address past abuses, including enforced disappearances. This policy should encompass the victims' right to truth, justice, reparation and remembrance.

74. While no new cases of enforced disappearance are currently being reported to the Working Group, and legislative steps have been taken to prevent the occurrence of enforced disappearance in the future, there is a lack of recognition of a large number of past cases. The slow progress in a structured search for all those who disappeared during the dictatorship, the general impunity for perpetrators of enforced disappearance, the paucity of efforts to memorialize past abuses, including enforced disappearances, and the lack of a comprehensive reparations scheme are all a serious source of concern for the Working Group.

75. There is an urgent need to engage in a process of investigation, exhumation and identification of the remains of disappeared persons so that they can be handed over to their families through a mapping of the places thought to have contained the remains during the dictatorship period, and to provide this process with all the financial and human resources required to ensure its success.

76. The Working Group stresses that enforced disappearance cannot be considered as an issue of the past. It is a continuous crime which persists until the fate and whereabouts of a forcibly disappeared person are clarified. The lack of judicial enquiries and continuing impunity for cases of enforced disappearance are not only a violation of the rights to truth and justice of the victims, but may also be a source of new violations in the future.

VIII. Recommendations

77. In the light of the above, the Working Group formulates the following recommendations.

General

78. The Working Group recommends that the Government of Albania:

(a) Establish a mechanism dedicated to dealing with the prejudices resulting from the political repression of the past, on the basis of a global approach instead of fragmented measures taken by several institutions;

(b) Recognize the enforced disappearances of the past in order to guarantee the rights of victims and families to truth, justice, reparation and memory and

guarantee non-repetition, through an appropriate mechanism in concert with victims and associations.

Legislative and institutional framework

79. **The Working Group recommends that the Government of Albania:**

(a) **Expand the current legislative framework in order to comprehensively secure the rights of both society and victims of enforced disappearance to know the truth about what happened during the dictatorship, the right of families to have the remains of their loved ones found, identified and returned to them, the right to access to justice, the right to reparation, including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition, and the right to memory;**

(b) **Consolidate the institutional framework for addressing the enforced disappearances of the past; consider establishing a broadly mandated, multidisciplinary, "one-stop shop" type of institution to secure the rights of victims and to achieve national reconciliation; such an institution should, inter alia, be responsible for receiving and verifying complaints of enforced disappearance; keep a national register of disappeared persons and identified burial sites;**

(c) **Grant the status of victim of enforced disappearance to family members of persons who disappeared or whose remains disappeared during acts of repression, whether this was a result of political persecution or not; as an immediate step, amend the existing mechanism to compensate for the suffering endured by Albanians under the authoritarian regime by expressly including victims of enforced disappearance as beneficiaries, without the requirement that they must provide evidence of political persecution;**

(d) **Introduce in relevant legislation the possibility of obtaining a certificate of absence due to enforced disappearance to define the legal status of forcibly disappeared persons and to guarantee pertinent rights to their family members;**

(e) **Expressly provide that enforced disappearance is a continuous crime to which amnesties and immunities cannot be applied.**

Truth

80. **The Working Group recommends that the Government of Albania:**

(a) **Take firm and decisive steps for the swift adoption of a comprehensive policy to search, locate and identify the remains of persons executed during the dictatorship, including:**

(i) **Establishing a disaggregated register with the exact or approximate number of disappeared persons;**

(ii) **Identifying locations of potential burial sites and establishing centralized mapping for all these locations;**

(iii) **Establishing and enforcing standard operating procedures for the proper preservation of currently identified burial sites and of any samples found therein;**

(iv) **Opening investigations at some of the identified burial sites;**

(v) **Launching the creation of a national DNA bank to which families can contribute samples, and raising awareness among families about its use and purpose;**

(vi) **Ensuring annual budgetary allocations for the above-mentioned endeavours;**

(b) **Finalize the accession of Albania to the Agreement on the Status and Functions of the International Commission on Missing Persons, and swiftly take any other legal and policy measures required to enable the immediate launch of the Commission's project in Albania;**

(c) **Swiftly promulgate the necessary regulation to frame the practical functioning of the new authority for the opening of the Sigurimi files, and ensure the allocation of adequate financial and human resources in order to maximize its results;**

(d) **Take immediate measures to preserve all existing records and documentation relating to the human rights violations of the past, including enforced disappearances, regardless of the government institution holding them.**

Justice

81. **The Working Group recommends that the Government of Albania:**

(a) **Communicate to law enforcement institutions a sense of urgency and encourage them to initiate ex officio investigations into cases of enforced disappearance, regardless of the time that has elapsed since these occurred, and provide them with all the necessary means to this end;**

(b) **Without delay, organize professional training for law enforcement officials, judges and lawyers representing victims relating to applicable international standards, specific characteristics of crimes of enforced disappearance and corresponding investigative and judicial practices, including the need for heightened sensitivity in dealing with victims;**

(c) **Provide victims of enforced disappearance with legal avenues to obtain truth and justice, and take specific measures to encourage the use of those avenues in preference to private inquiries or exhumations; to this end, the State should make available free legal aid and promote the active participation of victims in official investigations and judicial proceedings;**

(d) **Carry out immediate judicial reforms as envisioned by recently adopted constitutional and legislative provisions, including implementation of the vetting mechanism.**

Reparation and memory

82. **The Working Group recommends that the Government of Albania:**

(a) **Develop a reparation mechanism tailored to the nature of the violation, namely enforced disappearance, which guarantees the right of victims and their families to compensation, restitution, rehabilitation and memory — this mechanism should consider the families of the disappeared as victims just like the direct victims of other serious human rights violations perpetrated under the dictatorship;**

(b) **Offer a new opportunity for reparation to families of victims of enforced disappearance who were excluded under the initial deadline for surviving victims;**

(c) **Reparation should also take into account medical, psychological and moral support for the harm suffered, as well as support for families during the search for and exhumation, identification and recovery of remains, in addition to compensation;**

(d) **Establish a strategy of memory based on the identification of places of reflection for families and places of remembrance for Albania as a whole;**

(c) **Adopt a participatory approach with the families of victims and associations working in the field of memory for the design, implementation and celebration of memory;**

(f) **Provide the necessary budgets for memory projects and ensure their sustainability and visibility.**

83. **The Working Group invites the Government of Albania to submit within 90 days of the date of the presentation of the present report to the Human Rights Council a timetable showing the steps that it will take to implement the present recommendations.**